

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:12CR271
	)	
v.	)	
	)	
PAUL ROSBERG, KELLY	)	MEMORANDUM AND ORDER
ROSBERG,	)	
	)	
Defendants.	)	
_____	)	

On March 25, 2013, and after giving them an opportunity to orally argue and present evidence, I took under advisement the defendants' motion regarding destruction of evidence.

I required the government to present evidence on this question because the defendants had made a sufficient preliminary showing to warrant a more in-depth inquiry. Also, I received into evidence certain photographs offered by the defendants. Additionally, I allowed the defendants to tell me what they would testify to regarding their destruction claim if they elected to give testimony on that subject.<sup>1</sup>

After considering all this information, I now deny the motion. Among other things, I find and conclude that:

(1) the government did not act in bad faith in failing to preserve evidence assuming, without deciding, that exculpatory evidence was not preserved;

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<sup>1</sup>This allowed the defendants to avoid cross-examination.

(2) assuming some evidence was not preserved, it has not been shown that evidence was in fact exculpatory;

(3) if evidence was not preserved and that evidence was exculpatory, the exculpatory nature of the evidence would not have been apparent to the government agents who seized or detained the evidence; and

(4) for all the evidence addressed in the motion excepting the Hobart scale, there is an insufficient showing that the defendants are unable to obtain comparable evidence by other reasonably available means.

IT IS ORDERED that the Motion to Dismiss with Prejudice (filing no. 75) is denied.

March 29, 2013.

BY THE COURT:

*s/ Richard G. Kopf*

Senior United States District Judge